

contract which was filed as an exhibit with the bill, is recited in the opinion.

The injunction issued as prayed, and on the 28th of May, the defendant, Myers, filed his answer, in which he admits that an agreement was made between the complainant and himself, about the time stated in the bill, and with reference to the body of wood therein described, but denies the complainant's exhibit contains a true exposition of the terms of said agreement, or that the paper so exhibited was ever, as it purports to be, signed by respondent, or by any person authorized by him to sign the same. He also denies that the contract exhibited, is rightly and accurately described in the bill, and insists that even if the terms of said agreement be truly stated in said paper, and his genuine signature be thereto affixed, the contract thus admitted to be the basis of the complaint, is so radically and materially defective, and is so clearly unequal in its operation and effect as to afford the complainant no right to proceed against the respondent in this or any other form of action whatever, either in law or in equity, of which matters this respondent craves the same benefit and advantage in this answer, that he might, or could, have from any form of averment, or from any mode or form of equity pleading whatever. The answer then proceeds to set forth the agreement which the defendant insists was actually entered into between the parties, essentially differing from that set up in the bill, and states at length the compliance on the part of the defendant with all the terms of this agreement as understood by him, and various misrepresentations and failures to perform, on the part of the complainant. Testimony was taken under a commission, which it is not necessary to state.]

THE CHANCELLOR:

This is not a bill for the specific execution of a parol agreement upon the ground of part performance, which, according to the case of *Moale vs. Buchanan et al.*, 11 *Gill & Johns.*, 314, takes the case out of the statute of frauds; but a bill, which alleging the contract to be in writing, and a failure to perform